

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R06-XXX
July 13, 2006**

**Amendment to the Water Quality Control Plan for the Los Angeles Region to
Incorporate a Total Maximum Daily Load for Metals and Selenium
in the San Gabriel River and Impaired Tributaries**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality objectives which are sufficient to protect beneficial uses for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years. A schedule was established in the consent decree for the completion of the first 29 TMDLs within 7 years. The remaining TMDLs will be scheduled by Regional Board staff within the 13-year period.
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). The regulations in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters.
4. The numeric targets in this TMDL are not water quality objectives and do not create new bases for enforcement against dischargers apart from the water quality objectives they translate. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. WLAs are only enforced for a discharger's own discharges, and then only in the context of its National Pollutant Discharge Elimination System (NPDES) permit (or other permit, waiver, or prohibition), which must be consistent with the assumptions and requirements of the WLA. The Regional Board will develop permit requirements through a subsequent permit action that will allow all interested persons,

T
E
N
T
A
T
I
V
E

including but not limited to municipal storm water dischargers, to provide comments on how the WLA will be translated into permit requirements.

5. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and other applicable statewide plans, serve as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Regional Board.
6. The San Gabriel River receives drainage from a 682 square mile area of eastern Los Angeles County and has a main channel length of approximately 58 miles. Its headwaters originate in the San Gabriel Mountains with the East, West, and North Forks. The river flows through a heavily developed commercial and industrial area before emptying into the Pacific Ocean at the Los Angeles/Orange County boundary in Long Beach. The main tributaries of the river are Walnut Creek, San Jose Creek, and Coyote Creek.
7. On May 18, 2000, the U.S. EPA promulgated numeric criteria for priority pollutants for the State of California, known as the California Toxics Rule (CTR), codified as 40 CFR section 131.38. Federal water quality standards under section 303 of the Clean Water Act consist of designated uses and criteria to protect those uses. (40 C.F.R. 131.3(i).) Designated uses are beneficial uses under state law, and criteria are water quality objectives under state law. The CTR establishes the numeric water quality objectives for various toxic pollutants. These objectives apply “without exception” to all inland surface waters within the State of California, including the Los Angeles region. (40 C.F.R. 131.38(d)(1)-(2).)
8. “[I]t is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.” (33 U.S.C. 1251(a)(3).) Water quality standards, including the CTR, reflect this express national policy of Congress. When a pollutant is present at levels in excess of the CTR numbers, then the pollutant is present in toxic amounts. In this sense, the numeric objectives in the CTR are U.S. EPA’s determination of when priority pollutants are present at toxic amounts in contravention of Congress’s national policy.
9. The Regional Board’s goal in establishing the TMDL for Metals and Selenium in the San Gabriel River and Impaired Tributaries is to protect the aquatic life and water supply beneficial uses of the San Gabriel River and its tributaries and to achieve the numeric water quality objectives set to protect these uses as contained in the CTR.
10. Regional Board staff have prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Total Maximum Daily Loads for Metals and Selenium in the San Gabriel River and Impaired Tributaries" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting. Further, the technical document provides the detailed factual basis and analysis supporting the problem statement, numeric targets (interpretation of the numeric water quality objective, used to calculate the load allocations), source analysis, linkage analysis, waste load allocations (for point sources), load allocation (for nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
11. The scientific basis for the TMDL was subjected to an independent, external peer review pursuant to the requirements of Health and Safety Code section 57004.

T
E
N
T
A
T
I
V
E

12. On July 13, 2006, prior to the Board's action on this resolution, public hearings were conducted on the TMDL for Metals and Selenium in the San Gabriel River and Impaired Tributaries. Notice of the hearing for the TMDL for Metals and Selenium in the San Gabriel River and Impaired Tributaries was published in accordance with the requirements of Water Code section 13244. This notice was published in the Los Angeles Times, the San Gabriel Valley Tribune, and the Long Beach Press Telegram.
13. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A public workshop was held on March 22, 2006 at the Regional Board offices at 320 West 4th Street, Los Angeles, CA 90013. A notice of the workshop was sent to interested parties including cities and/or counties with jurisdiction in or bordering the San Gabriel River watershed.
14. In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the Water Code.
15. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (40 CFR 131.12).
16. The basin planning process has been certified the Resources Agency as an exempt regulatory program because its process adequately fulfills the purposes of the California Environmental Quality Act. The Regional Board is therefore exempt from CEQA's requirement to prepare an environmental impact report, negative declaration, or initial study (Public Resources Code, Section 21000 et seq.), and as such, the required substitute environmental documentation (including the CEQA environmental checklist) have been prepared. A CEQA Scoping hearing was conducted on December 12, 2005 at the Regional Board offices at 320 West 4th Street, Los Angeles, CA 90013. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the San Gabriel River watershed.
17. The proposed amendment results in no reasonable potential for adverse effects (de minimis finding), either individually or cumulatively, on wildlife.
18. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
19. The Basin Plan amendment incorporating a TMDL for Metals and Selenium in the San Gabriel River and Impaired Tributaries must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA. A Notice of Decision will be filed.
20. If during its approval process Regional Board staff, the SWRCB or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or

T
E
N
T
A
T
I
V
E

consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:

1. Pursuant to sections 13240 and 13242 of the California Water Code, and section 303(d) of the federal Clean Water Act, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapters 3 and 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the TMDL for Metals and Selenium in the San Gabriel River and Impaired Tributaries.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
3. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.
4. If during its approval process the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Jonathan S. Bishop, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on July 13, 2006.

Jonathan S. Bishop
Executive Officer

T
E
N
T
A
T
I
V
E